IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 277 of 1998(B)

OPMV.999/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT: (PETITIONER)

K.MOHAMMED KUNHI, S/O.ABDUL KHADER,
AGED 44 YEARS, BUSINESS, RESIDING AT
VALAPATTANAM AMSOM, VALAPATTANAM
DESOM, P.O., VALAPATTANAM.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS: (RESPONDENTS)

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1. MRS.SHYAMALA SREEDHARAN, 'KALLIANI' MANDIRAM,
   KIZHUTHALLI P.O., CHOVVA, KANNUR DISTRICT.

2. M/S.UNITED INDIA INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, KANNUR.

3. K.P.SELVARAJAN, S/O.RAMAKRISHNAN, 26 YEARS,
   RESIDING AT KUNHIPURAYIL HOUSE, NARATH AMSOM
   AND DESOM.

4. V.V.MUNEER, S/O.LATE V.P.ABOOBACKER,
   AGED 30 YEARS, SAMEERA MOTOR SERVICE,
   P.O. MATTOOL NORTH.

5. M/S.UNITED INDIA INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, KANNUR.

6. PALLIKKARUVATH SHAHUL HAMEED, S/O.MAMMU,
   AGED 34 YEARS, MADAI AMSOM, PAYANGADI P.O.

BY ADV. SRI.P.V.MADHAVAN NAMBIAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 277 of 1998

Dated this the 6th August, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.) No.999/1993, on the file of the Motor Accidents Claims Tribunal, Thalassery, is the appellant. The appeal is filed challenging the quantum of compensation awarded by the Tribunal.

2. The short facts necessary for disposal of the appeal are as follows. On 27.12.1992, appellant sustained injuries in a motor vehicle accident. According to the appellant, when he reached near the railway gate at Pappinissery, a number of vehicles including a stage carriage bus were found parked on the eastern side of the gate, due to the closure of the gate. It was averred that while he attempted to alight into a stationary bus bearing Registration No.KRC 5679, owned by the 4th respondent, Insured by the 5th respondent and driven by the 6th respondent, another stage carriage bus bearing Registration No.KL-13/5247, owned by the first respondent, driven by the second respondent and insured by the 3rd respondent, came in reverse and sandwiched the appellant in between the two buses. He sustained

injuries. According to the appellant, the accident occurred due to rash or negligent driving of the buses by both the drivers. Respondents 1 and 3 though appeared did not file any written statement. 4th respondent remained absent and was set ex party. Respondents 2 and 5 Insurers filed written statement denying the liability. Negligence alleged was denied. It was also contented that the appellant did not sustain any serious injuries. 6th respondent filed a written statement admitted that he was the driver of the bus bearing Registration No.KRC 5679. He contented that there was absolutely no negligence on his part. Accident occurred due to the negligence of the appellant himself, and hence, he was not entitled to get any compensation. It was also contented that the petitioner did not sustain any serious injuries. The Tribunal found that the accident occurred due to the negligence of the driver of the bus bearing Registration No.KL-13/5247. It was also found that there was absolutely no negligence on the part of the driver of the bus bearing Registration No.KRC 5679, as it was parked at that time. It was further held that the appellant was also responsible for the accident. The Tribunal held that the appellant was 30% responsible and the driver of the bus bearing Registration No.KL-13/5247 was 70% responsible. The Tribunal found that the

total compensation due to the appellant comes to Rs.4,250/=. But awarded only an amount of Rs.2975/=, deducting the 30% of the total amount. Challenging that award, this appeal is filed.

3. The fact that appellant sustained injuries in an accident involving two vehicles is not denied. The accident occurred near a railway gate. The Tribunal found that there was no bus stop at that place. It was further found that the appellant negligently made an attempt to get into the bus, without taking care of other vehicles. The evidence on record shows that the accident occurred near a railway gate which was closed. The buses were parked stationary. It is true that there was no bus stop in that place. But the petitioner was trying to board into a stationary bus. Merely because there was no bus stop, it cannot be found that appellant was also negligent. The evidence on record clearly shows that the accident occurred due to the negligence of the driver of the bus, KL-13/5247. The finding of the Tribunal that the appellant had also contributed to the accident, hence he was liable to the extent of 30% is unsustainable and liable to the set aside. I hold that the accident occurred due to the negligence of the driver of the stage carriage bus bearing Registration No.KL-13/5247.

4. Now, I shall consider the quantum of compensation. The Tribunal has awarded an amount of Rs.2500/= for pain and sufferings, Rs.1000/= for treatment expenses, and Rs.750/= for loss of earnings. I am of the view that the Tribunal ought to have awarded a further amount of Rs.750/= towards loss of earnings, and hence I award Rs.750/= more on that count. I do not find any reason to modify the amount awarded on other counts. The appellant is entitled to get a total compensation of Rs.5000/=. I hold that the appellant is entitled to get the entire amount. But for the enhanced amount, appellant is entitled to get only 6% interest from the date of petition, till the date of realisation. The second respondent, Insurer, is directed to deposit that amount in favour of the appellant.

5. In the result, the appeal is allowed in part. The finding of the Tribunal that the appellant has also contributed to 30% of the accident is set aside. The compensation already awarded is enhanced to Rs.5000/=. An award is passed allowing the appellant to recover an amount of Rs.2025/= as balance compensation from the second respondent, Insurance Company, with 6% interest from the

date of petition, till the date of realisation. The 2nd respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 277 of 1998

J U D G M E N T

Dated: 6th August, 2007.